

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

AARON FULGHAM, No. 2:03-cv-1714-MCE-KJM-P

Petitioner,

v.

ORDER

CHERYL PLILER, Warden,

Respondent.

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Petitioner, a state prisoner proceeding pro se, has timely filed a Notice of Appeal of this Court's March 21, 2006 denial of his Application for a Writ of Habeas Corpus. Before Petitioner can appeal this decision, a certificate of appealability must issue. 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b).

A certificate of appealability may issue under 28 U.S.C. § 2253 "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2).

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1 The certificate of appealability must "indicate which specific
2 issue or issues satisfy" the requirement. 28 U.S.C.
3 § 2253(c)(3).

4 A certificate of appealability should be granted for any
5 issue that petitioner can demonstrate is "'debatable among
6 jurists of reason,'" could be resolved differently by a different
7 court, or is "'adequate to deserve encouragement to proceed
8 further.'" Jennings v. Woodford, 290 F.3d 1006, 1010 (9th Cir.
9 2002) (quoting Barefoot v. Estelle, 463 U.S. 880, 893 (1983)).¹

10 Petitioner has made a substantial showing of the denial of a
11 constitutional right in the following issue(s) presented in the
12 instant Petition: whether Petitioner's rights were violated when
13 the trial court removed Juror No. 11 for refusing to deliberate.

14 Accordingly, IT IS HEREBY ORDERED that a Certificate of
15 Appealability is issued in the present action.

16 DATED: August 14, 2006

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MORRISON C. ENGLAND, JR.
UNITED STATES DISTRICT JUDGE

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24 ¹ Except for the requirement that appealable issues be
25 specifically identified, the standard for issuance of a
certificate of appealability is the same as the standard that
26 applied to issuance of a certificate of probable cause.
Jennings, at 1010.